



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 74

[MB Docket No. 19-193; FCC 21-70; FR ID 35680]

#### Low Power FM Radio Service Technical Rules

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopts an Order on Reconsideration (Order) to consider petitions for reconsideration filed in response to revisions of technical rules that primarily affect Low Power FM (LPFM) radio stations.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, in MB Docket No. 19-193, FCC 21-70, adopted June 15, 2021 and released on June 16, 2021. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website <https://www.fcc.gov/edocs> or by downloading the text from the Commission's website at <https://ecfsapi.fcc.gov/file/0616283713905/FCC-21-70A1.pdf> or <https://docs.fcc.gov/public/attachments/FCC-21-70A1.pdf> (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are

available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### **Final Paperwork Reduction Act of 1995 Analysis**

The Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. Therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

### **Congressional Review Act**

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule change is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

### **Synopsis**

1. *Introduction.* On June 15, 2021, the Commission adopted an Order on Reconsideration (Order), Amendment of Parts 73 and 74 of the Commission's Rules to Improve the Low Power FM Radio Service Technical Rules; FCC 21-70, MB Docket No. 19-193. The Order dismisses in part and denies in part two petitions for reconsideration of revisions to technical rules governing the Low Power FM (LPFM) service in order to improve LPFM reception and increase flexibility in transmitter siting while maintaining interference protection and the core LPFM goals of diversity and localism. The Order also restores text that was inadvertently deleted from an existing LPFM rule.

2. The Commission proposed to modify the LPFM technical rules in a Notice of Proposed Rulemaking published at 84 FR 49205 (Sept. 19, 2019). It adopted revised technical rules in a Report and Order published at 85 FR 35567 (June 11, 2020). The Commission

established that the revisions would apply prospectively, i.e., to applications for which no decision had yet issued as of the rules' effective date. The goal of the revisions was to provide LPFM stations with greater flexibility, to improve their service, and to remove regulatory burdens.

3. *Petitions for Reconsideration.* The Commission received two petitions for reconsideration. One petition sought further revisions of the LPFM rules to increase maximum power, eliminate certain testing requirements for directional antennas, and revise a requirement that LPFM stations use equipment that has been certified for LPFM use. Another petition asked the Commission to extend the new rules to cases decided under former rules if the decision was not yet final when the new rules took effect. The Order dismisses and/or denies these petitions consistent with the Commission's goal of keeping LPFM requirements simple and accessible in order to facilitate construction and operation of community-oriented noncommercial stations by organizations with limited expertise and small budgets.

4. *Restoration of Inadvertently Deleted Language.* The Order takes the opportunity to correct an error that occurred when the Commission amended the Rules to permit LPFM stations to retransmit their signals over co-owned FM booster stations. In making ancillary changes to add the concept of LPFM boosters to existing rules governing booster use in other services, the Commission inadvertently deleted three words ("or FM translator") from the existing language in section 74.1263(b) of the Rules. The Order includes a rule revision to restore that language. Because the deletion of FM translators from the scope of the rule in question was clearly inadvertent and correcting this error is noncontroversial, the Order finds that the notice and comment procedures of the Administrative Procedure Act would serve no useful purpose and are therefore unnecessary.

## **FINAL REGULATORY FLEXIBILITY ANALYSIS**

5. The Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 603 and amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub.

L. No. 104-121, Title II, 110 Stat. 847 (1996), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” 5 U.S.C. 601(6); See 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. 601(3). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. See 5 U.S.C. 601-612.

6. This Order on Reconsideration disposes of petitions for reconsideration in MB Docket Nos. 19-193 and 17-105 without making any resulting rule changes. The only rule change made in the Order on Reconsideration merely reinserts a phrase that the NPRM and Order inadvertently deleted. Because this rule change does not require notice and comment, the Regulatory Flexibility Act does not apply. *Id.* 601(2). In the Order in this proceeding, the Commission issued a Final Regulatory Flexibility Analysis (FRFA) that conforms to the RFA, as amended. Order, 35 FCC Rcd at 4149, Appendix C. The Commission received no petitions for reconsideration of that FRFA. This Order on Reconsideration does not alter the Commission’s previous analysis under the RFA.

7. *Congressional Review Act.* The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

## **ORDERING CLAUSES**

8. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, as well as the Local Community Radio Act of 2010, Pub. L. No. 111-371, 124 Stat. 4072 (2011), and the Administrative Procedure Act, 5 U.S.C. 553(b)(B), this Order on Reconsideration **IS ADOPTED.**

9. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by Todd Urick, Todd Urick (Common Frequency) and Paul Bame (Prometheus Radio Project) along with Peter Gray (KFZR-LP), Makeda Dread Cheatom (KVIB-LP), Brad Johnson (KGIG-LP), David Stepanyuk (KIEV-LP), and Andy Hansen-Smith (KCFZ-LP) **IS DISMISSED IN PART and DENIED IN PART.**

10. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by Foundation for a Beautiful Life **IS DISMISSED and in the alternative IS DENIED.**

11. **IT IS FURTHER ORDERED** that, effective 30 days after publication in the **Federal Register**, 47 CFR 74.1263(b) **IS AMENDED** as specified in Appendix A of the Order.

12. **IT IS FURTHER ORDERED** that the Commission shall send a copy of this *Order on Reconsideration* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 74**

FM broadcast booster station, LPFM booster, Time of operation, Station identification.

FEDERAL COMMUNICATIONS COMMISSION

**Marlene Dortch,**  
*Secretary.*

## Final Rules

For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR part 74 as follows:

### **PART 74- EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

2. Amend § 74.1263 by revising paragraph (b) to read as follows:

#### **§ 74.1263 Time of operation.**

\* \* \* \* \*

(b) An FM booster or FM Translator station rebroadcasting the signal of an AM, FM or LPFM primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted. Notwithstanding the foregoing, FM translators rebroadcasting Class D AM stations may continue to operate during nighttime hours only if the AM station has operated within the last 24 hours.

\* \* \* \* \*

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